NOTES OF CASES.

Is a Restriction in a Deed Forbidding the Erection of a Stable Violated by Erecting a Garage?—From the "Yale Law Journal" we take the following interesting note: It was recently held in Riverbank et al. *v.* Bankcroft, et al., 95 N. E. (Mass.) 216, that a restriction in a deed providing that "no stable of any kind, private or otherwise, shall be erected or maintained on the premises" is not violated by the building of a garage on the described premises. A clear understanding of the holding demands a somewhat detailed statement of the circumstances under which the deed was executed. In 1889 the plaintiff company acquired title to a tract of land adjacent to the city and laid it out in building lots. These lots were sold to divers persons and all of the deeds of conveyance were of a standard form, containing a number of restrictions from which it is evident that this territory was laid out for a residential district. On this point the Court said, "It is apparent from the form of the deeds and from the facts shown, that the company intended that this territory situated upon the south bank of the Charles River, and at some distance from the business section, should be a fine residential district." Under these circumstances all the deeds, including the one involved in this case, were executed. About twenty years later the building of a garage on one of these lots prompted the plaintiffs to bring a bill for an injunction to restrain its erection.

The question before the Court was whether a "garage" was a "stable" within the meaning of the restriction forbidding the erection of a "stable of any kind." Owing to the fact that the garage is a product of recent years, the answer to this question cannot be had from a study of cases. Necessarily it must be obtained from the general principles underlying the construction of restrictive covenants in deeds. It is almost a maxim of real property law that the construction of covenants will be favorable to the grantee. A restriction will not be enlarged or extended by construction. Glenn *v.* Davis, 5 Md. 208; Hawes *v.* Favor, 161 Ill. 440; Roberts *v.* Porter, 100 Ky. 130. But perhaps the truer and more helpful rule is laid down in Silberman *v.* Mayer, 48 Misc. (N. Y.) 468, 472, where the Court said, "The intent of the parties as gathered from the instrument and the surrounding circumstances, must control, and the rights of the parties as fixed by the intent should neither be extended on the one hand nor limited on the other, but strictly enforced." Affirmed, 116 App. Div. 869.

An examination of some of the cases will show the attitude of the courts on this question. In Levy *v.* Shreyer, 27 App. Div. (N. Y.) 282, there was a covenant in the deed forbidding the building of any houses, "except private dwellings." It was held that a house internally arranged for the accommodation of three families, al-

though externally not essentially different from adjoining private dwellings, offended the covenant.

In Wilkinson *v.* Rogers, 10 Jur. N. S., 5 (Eng.), it was held that a covenant to use a house as a dwelling house only was broken by putting up a notice in the window, "A. B., coal office," and taking orders for the coal at the house, although no coal was actually supplied there to customers, and the house was in other respects used as a dwelling house.

Another and more striking case showing that the courts do not hesitate to construe the restriction in a manner that is apparently favorable to the grantor if by so doing they can carry out the intent of the parties, is the case of Blackemore *v.* Stanley, 159 Mass., 6, where the restriction in the deed provided that no building should be erected on the lot, costing less than a certain sum. The grantee put up a tent, 10 feet by 12 feet in size, in which he and his family cooked but did not sleep. It was held that the tent was a building within the meaning of the restriction, and since it cost less than the stated sum, it was a violation of the covenant. This decision was by the same Court that gave the decision in the principal case.

To determine whether a garage is intended under the term stable one naturally turns to the lexicographic definitions. The Standard Dictionary, edition of 1898, defines a stable as a building often used for putting up vehicles. The Century Dictionary, edition of 1911, defines "garage" as a "stable for motor cars."

However, most definitions of "stable" show that it implies the idea of shelter for domestic animals. In Dugal *v.* State, 100 Ind., 259, the Court said that a stable is a house, shed or building for beasts to lodge or feed in; and to call a building a stable is sufficient to indicate the purpose for which it is intended to be used.

In Kitching *v.* Brown, 180 N. Y., 414, a deed executed in 1873 contained a restrictive covenant that no tenement house should be built on the lot. In 1900 the defendant erected a modern apartment house on it. When the covenant was made in 1873 the modern apartment house was unknown. But the plaintiff contended that it differed from a tenement house in degree rather than in kind, and that the building of it was a violation of the covenant. The court held, however, that an apartment house is an essentially different thing from a tenement house, and therefore the covenant was not violated. There is a very striking analogy between this case and the principal case. In the principal case the deed was executed in 1889, when a garage was unknown and undefined. And a garage certainly differs from a stable as much as an apartment house differs from a tenement house. The fact that a garage may be as objectionable as a stable does not affect the case if it is so different as to be said not to come within the intent of the parties.

It is undoubtedly true that the courts will not generally construe

a covenant in a deed in favor of the grantor. Yet the court will do so when this clearly appears to have been the intent of the parties. To determine what this intent was the circumstances under which the covenant was made must be taken into consideration. In the light of these guiding principles it would seem that the court in the principal case properly held that the erection of a garage was not a violation of the covenant against the erection of a stable.

Nuisances—Nature and Elements.—The use of machinery in a building, causing vibrations and other disturbances in an adjoining house, is none the less a nuisance by reason of the fact that the adjoining house is old and less capable of resisting the causes complained of than a newer house would be.

Nuisances—What Constitutes—Machine Shop in Residence Section.—The operation of a machine shop, wherein an acetylene welder was used, in a residence neighborhood, held, under the circumstances of this case, to cause such discomfort, danger and injury to an adjoining property owner as to amount to a nuisance which should be enjoined.

Same—Use Made of Property.—Although the occupant of a building in a part of a city which has acquired a particular character, e. g., a manufacturing district, must accept the inconveniences and disturbances reasonably appropriate to the neighborhood, he may not be subjected to discomforts and damage arising from uses of adjoining property which are unreasonable and inappropriate to the particular locality.—Penniman *v.* Trautfelter, Circuit Court of Baltimore City, 1 Maryland Rep. 49.

Telegraphs and Telephones—Operation—Transmission of Messages—Claim for Damages.—Even if the condition printed upon a telegraphic blank, stating that a telegraph company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within 60 days after the message is filed with the company for transmission, be valid and binding, still if the suit for the recovery of the penalty provided for in §§ 2812, 2813, of the Civil Code, is brought within 60 days after the massage is filed with the company for transmission, no other or further presentation of the claim is necessary. Petty *v.* Western Union Telegraph Co. (Supreme Court of Georgia, June 13, 1912), 75 S. E. Rep. 152.

Note.—While there is some conflict of authority on the question here decided, the weight of authority, and of reason as well would seem to support the rule as laid down here. As the suit is equivalent to a written presentation of claim, it should therefore be a sufficient compliance with the stipulation. The courts of Alabama, Indiana, North and South Carolina, Tennessee and Texas have so held, although some of the courts of Civil Appeals did take the contrary view See 37 Cyc., p. 1691.